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OFFICE OF THE COUNTY AUDITOR INTEROFFICE MEMORANDUM

TO: All Council Members
FROM: Lauren M. Smelkinson, County Auditor *LMS*
DATE: December 13, 2011
SUBJECT: Addendum to Council Meeting Notes

Please find attached an addendum (FM-8) to the Council Meeting Notes issued December 8, 2011.

This item will be discussed at the December 13, 2011 work session for the December 19, 2011 Council meeting.

Attachment

cc: notes distribution list

FM-8 (Contract Amendment)

Council District(s) All

Department of Public Works

Processing of Municipal Solid Waste

The Administration is requesting approval of an amendment to a contract with Wheelabrator Baltimore, LP for the disposal of residential municipal solid waste. The amendment extends the initial 10-year term of the agreement, which commenced December 7, 2009, by approximately 2 years through December 31, 2021 and clarifies certain aspects of the termination clause of the contract. The amendment also provides various financial incentives to the County in exchange for the County increasing the tonnage of solid waste provided to Wheelabrator. See Exhibit A.

Fiscal Summary

Funding Source	Estimated Cost of 2-Year Contract Extension	Estimated Savings Due to Financial Incentives	Net Cost of Contract Amendment
County ⁽¹⁾	\$ 24,525,050 ⁽²⁾	\$ 16,000,000 ⁽³⁾	\$ 8,525,050
State	--	--	--
Federal	--	--	--
Other	--	--	--
Total	<u>\$ 24,525,050</u>	<u>\$ 16,000,000</u>	<u>\$ 8,525,050</u>

⁽¹⁾ General Fund Operating Budget.

⁽²⁾ Assumes the guaranteed annual tonnage of 215,000 tons of waste.

⁽³⁾ Savings over the remaining initial contract term, including the 2-year extension proposed by this contract amendment.

Analysis

On December 7, 2009, the Council approved a contract with Wheelabrator Baltimore, LP for the disposal of residential municipal solid waste at its Baltimore Refuse Energy System Company (BRESKO) waste-to-energy facility. Contractual waste haulers transport the waste from the

County's three municipal solid waste acceptance facilities (the Baltimore County Resource Recovery Facility in Cockeysville, the Eastern Sanitary Landfill in White Marsh, and the Western Acceptance Facility in Halethorpe) to the Wheelabrator disposal facility.

The proposed amendment extends the initial 10-year term of the agreement, which commenced December 7, 2009, by approximately 2 years through December 31, 2021 and clarifies certain aspects of the termination clause of the contract. (The original contract provides for three additional 5-year renewal periods that will still remain in effect). The amendment also provides various financial incentives to the County in exchange for the County providing at least 215,000 tons of solid waste to Wheelabrator annually. Specifically, the amendment:

- Reduces per-ton contract prices for the disposal of municipal solid waste. The waste disposal unit prices range from \$46.23 per ton in the third contract year, which begins January 1, 2012, to \$57.74 per ton in the final contract year. Under the original contract, the unit prices ranged from \$47.60 per ton in the third contract year to \$62.60 per ton in the final contract year.
- Provides for a rebate of \$1.00 per ton for each ton of waste disposed of through Wheelabrator provided the County meets the guaranteed annual tonnage of 215,000.
- Provides for a one-time bonus payment of \$2,150,000 to be paid to the County on or before December 31, 2012. If the County should fail to meet the guaranteed annual tonnage of 215,000 tons in any contract year, or if the County should terminate the contract prior to its expiration, the County must refund a portion of the bonus payment.
- Provides for an annual retainer in exchange for the County permitting Wheelabrator to dispose of up to 60,200 tons of ash per year at the Eastern Sanitary Landfill (ESL). The amount of the retainer is based on the service charge per ton that Wheelabrator is charged to dispose of ash at the Baltimore City landfill. The amount of the retainer ranges from \$1,083,600 (\$18 per ton) in the contract year beginning January 1, 2012 to \$1,353,296 (\$22.48 per ton) in the final contract year. Wheelabrator is required to pay the retainer based on an annual tonnage of 60,200 tons even if the actual disposed tonnage falls short.
- Permits the County to accept only 60,200 tons of ash annually until an environmental impact study is completed that would permit the County to use ash as a daily landfill cover. If a study were to be completed in favor of this practice, Wheelabrator is permitted to dispose of up to 200,000 tons of ash at ESL annually. Wheelabrator must pay the service charge per ton of ash for tonnage exceeding 60,200 tons. The Department advised that there are currently no plans to conduct an environmental

impact study related to ash disposal at ESL and that Wheelabrator has no short-term plans to begin sending any ash to ESL. (However, the County does accept approximately 30 tons of ash per day from Harford County under an existing Waste Exchange Agreement.)

- Clarifies other provisions related to ash disposal and associated service fees.

The Department advised that approximately 92,410 tons of residential waste was disposed of through Wheelabrator during the first year of the contract (December 2009 through November 2010) and approximately 60,217 tons of waste were disposed of through Wheelabrator from December 2010 to October 2011. The Department estimates that the County will dispose of approximately 215,000 tons of waste annually through Wheelabrator in future contract years. The Department further advised that the financial incentives will result in a cost savings of approximately \$16 million over the 10 remaining contract years.

The contract states that compensation may not exceed the amount appropriated each year. The Department's FY 2012 operating budget includes \$12,107,867 for waste disposal fee costs. The Department advised that expenditures for this contract as of December 13, 2011 total \$6,823,966, estimated compensation for the initial approximate 12-year term of the contract totals \$110,597,612, and estimated compensation for the entire approximate 27-year term including renewals totals \$198,697,390.

Prior to the commencement of each contract year during the three 5-year renewal terms, unit prices may be increased in accordance with the Consumer Price Index - All Urban Consumers - United States Average - All Items (CPI-U), as published by the United States Department of Labor, Bureau of Labor Statistics at the time of the request, or up to a maximum 5% increase on the current pricing, whichever is lower. The County may terminate the contract (due to failing to appropriate sufficient funds for this agreement) by providing 180 days prior written notice.

The original contract was awarded through a competitive procurement process based on the best value to the County from two bids received. The other bidder, Republic Services of Pennsylvania, LLC, disposes a portion of the County's residential waste (at the County's option) at its facility in York, Pennsylvania under a separate contract approved by the Council on December 7, 2009; estimated contract costs for FY 2012 total \$3.3 million.

County Charter, Section 715, requires that "any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year...."

BALTIMORE COUNTY, MARYLAND

EXECUTIVE SUMMARY

WHEELABRATOR BALTIMORE, LP

TERM CONTRACT FOR DISPOSAL OF MUNICIPAL SOLID WASTE

AMENDMENT #1

RFP 206117

DECEMBER 19, 2011 COUNCIL MEETING

On December 7, 2009, Baltimore County awarded a contract to Wheelabrator Baltimore, LP for the disposal of municipal solid waste. The municipal solid waste is hauled by another County contractor to the BRESKO waste-to-energy plant in Baltimore City. Wheelabrator burns the municipal solid waste and generates electricity and steam.

This past fall, Wheelabrator approached Baltimore County about increasing the County's volume of municipal solid waste being hauled to BRESKO in exchange for cash incentives. Wheelabrator wishes to operate the BRESKO plant at full capacity in order to benefit from maximum efficiency. Recent plans by another firm to build a waste-to-energy plant in Baltimore City has raised concerns with Wheelabrator about the availability in the future of the local supply of municipal solid waste that they need to fuel their plant. As a result, the County and Wheelabrator have agreed to amend the existing agreement.

For the next ten years, Baltimore County will provide BRESKO with at least 215,000 tons of municipal solid waste annually. In consideration, Wheelabrator will provide the following cash incentives:

1. The existing contract unit prices have been reduced.
2. The County will be paid a rebate of \$1.00 per ton, payable at the end of each year.
3. The County will receive a bonus of \$2,150,000.00 payable after the first year. This amount equals the ten year period.
4. The County will receive a retainer payable at the end of each year for allowing Wheelabrator the right to dispose of up to 60,200 tons per year at Eastern Sanitary Landfill.

These cash incentives will provide the County over \$16 million in savings over the ten year period.

Prepared by: Department of Public Works